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EXAMINER

MILLER, BRANDON J

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/688,979
Filing Date: October 21, 2003
Appellant(s): BRAUN ET AL.

William T. Ellis
(Reg. No. 26,874)

Thomas G. Bilodeau
(Reg. No. 43,438)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/06/2008 appealing from the Office action mailed 06/13/2008.

1. *Real Party in Interest*

A statement identifying by name the real party in interest is contained in the brief.

2. *Related Appeals and Interferences*

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

3. *Status of Claims*

The statement of the status of claims contained in the brief is correct.

4. *Status of Amendments*

The appellant's statement of the status of amendments contained in the brief is correct.

5. *Summary of Claimed Subject Matter*

The summary of claimed subject matter contained in the brief is correct.

6. *Grounds of Rejection to be Reviewed on Appeal*

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

7. *Claims Appendix*

The copy of the appealed claims contained in 8. Claims Appendix of the brief is correct.

8. Evidence Relied Upon

5752041	Fosdick	12-1995
6732181	Lim et al.	06-2002
20010037403	Mougi et al.	04-2001

9. Grounds of Rejection

No new grounds of rejection have been introduced.

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1,148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claims 1-2, 7-9, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fosdick (5,752,041) in view of Lim et al (US 6,732,181 B2).

Regarding claim 1 Fosdick teaches a communications platform having a plurality of communications links (see col. 6, lines 38-41). Fosdick teaches each link providing a certain amount of traffic capacity to a communications network (see col. 6, lines 38-41, network usages relate to certain amount of traffic capacity). Fosdick teaches of which only a portion of the links to the communications network are enabled for use through activation of a first token (see col. 5, lines 33-35 and col. 6, lines 41-43). Fosdick teaches a licensing framework for enabling additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network (see col. 6, lines 35-41 and col. 7, lines 35-47). Fosdick teaches measuring the traffic level of the network and generating data related to the measured traffic level for determining whether the number of links used is greater than that provided for by the license (see col. 5, lines 16-18 & 25-48). Fosdick does not specifically teach a telecommunications platform; a license key; and activating an upgrade license key. Lim teaches a telecommunications platform (see col. 1, lines 66-67 and col. 2, lines 1-6). Lim teaches a license key and activating an upgrade license key (see col. 6, lines 51-59, use of system license from application key relates to license key). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device in Fosdick adapt to include a telecommunications platform; a license key; and activating an upgrade license key because Fosdick teaches a communication system and the function of the use tokens in Fosdick can be performed by the application key taught in Lim.

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Regarding claim 2 Fosdick and Lim teach a device as recited in claim 1 except for a traffic-monitoring element that is enabled for use by the licensing framework upon the activation of an upgrade license key. Fosdick does teach a traffic-monitoring element that is enabled for use by licensing framework upon activation of the usage token (see col. 5, lines 16-18 & 25-48). Lim does teach a license key and activating an upgrade license key (see col. 6, lines 51-59, use of system license from application key relates to license key). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device adapt to include a traffic monitoring element that is enabled for use by the licensing framework upon the activation of an upgrade license key because Fosdick teaches a communication system and the function of the use tokens in Fosdick can be performed by the application key taught in Lim.

Regarding claim 7 Lim teaches a replicated telecommunications platform connected in a high-availability arrangement through a high-availability framework (see col. 1, lines 15-27).

Regarding claim 8 Fosdick teaches a method of operating a communications platform having a plurality of communications links (see col. 6, lines 38-41). Fosdick teaches each link providing a certain amount of traffic capacity to a communications network (see col. 6, lines 38-41, network usages relate to certain amount of traffic capacity). Fosdick teaches of which only a portion of the links to the communications network are enabled for use through activation of a first token (see col. 5, lines 33-35 and col. 6, lines 41-43). Fosdick teaches enabling additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network (see col. 6, lines 35-41 and col. 7, lines 35-47). Fosdick teaches measuring the traffic level of the network and generating data related to the measured traffic level for determining whether the number of links used is greater than that

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provided for by the license (see col. 5, lines 16-18 & 25-48). Fosdick does not specifically teach a telecommunications platform; a license key; and activating an upgrade license key. Lim teaches a telecommunications platform (see col. 1, lines 66-67 and col. 2, lines 1-6). Lim teaches a license key and activating an upgrade license key (see col. 6, lines 51-59, use of system license from application key relates to license key). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device in Fosdick adapt to include a telecommunications platform; a license key; and activating an upgrade license key because Fosdick teaches a communication system and the function of the use tokens in Fosdick can be performed by the application key taught in Lim.

Regarding claim 9 Brandt and Fosdick teach a device as recited in claim 2 and is rejected given the same reasoning as above.

Regarding claim 14 Brandt and Fosdick teach a device as recited in claim 7 and is rejected given the same reasoning as above.

Regarding claim 15 Fosdick teaches a communications platform having a plurality of communications links (see col. 6, lines 38-41). Fosdick teaches each link providing a certain amount of traffic capacity to a communications network (see col. 6, lines 38-41, network usages relate to certain amount of traffic capacity). Fosdick teaches of which only a portion of the links to the communications network are enabled for use through activation of a first token (see col. 5, lines 33-35 and col. 6, lines 41-43). Fosdick teaches a licensing framework for enabling additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network (see col. 6, lines 35-41 and col. 7, lines 35-47). Fosdick does not specifically teach a telecommunications platform; a license key;

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and activating an upgrade license key. Lim teaches a telecommunications platform (see col. 1, lines 66-67 and col. 2, lines 1-6). Lim teaches a license key and activating an upgrade license key (see col. 6, lines 51-59, use of system license from application key relates to license key). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device in Fosdick adapt to include a telecommunications platform; a license key; and activating an upgrade license key because Fosdick teaches a communication system and the function of the use tokens in Fosdick can be performed by the application key taught in Lim.

Regarding claim 16 Fosdick teaches a communications platform having a plurality of communications links (see col. 6, lines 38-41). Fosdick teaches each link providing a certain amount of traffic capacity to a communications network (see col. 6, lines 38-41, network usages relate to certain amount of traffic capacity). Fosdick teaches of which only a portion of the links to the communications network are enabled for use through activation of a first token (see col. 5, lines 33-35 and col. 6, lines 41-43). Fosdick teaches a licensing framework for enabling additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network (see col. 6, lines 35-41 and col. 7, lines 35-47). Fosdick teaches measuring the traffic level of the network, in response to the activation of the usage token, and generating data related to the measured traffic level for determining whether the number of links used is greater than that provided for by the license (see col. 5, lines 16-18 & 25-48). Fosdick does not specifically teach a telecommunications platform; a license key; and activating an upgrade license key. Lim teaches a telecommunications platform (see col. 1, lines 66-67 and col. 2, lines 1-6). Lim teaches a license key and activating an upgrade license key (see col. 6, lines 51-59, use of system license from application key relates

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to license key). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device in Fosdick adapt to include a telecommunications platform; a license key; and activating an upgrade license key because Fosdick teaches a communication system and the function of the use tokens in Fosdick can be performed by the application key taught in Lim.

Regarding claim 17 Fosdick teaches a communications platform having a plurality of communications links (see col. 6, lines 38-41). Fosdick teaches each link providing a certain amount of traffic capacity to a communications network (see col. 6, lines 38-41, network usages relate to certain amount of traffic capacity). Fosdick teaches of which only a portion of the links to the communications network are enabled for (see col. 5, lines 33-35 and col. 6, lines 41-43). Fosdick teaches a licensing framework for enabling additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity to the communications network (see col. 6, lines 35-41 and col. 7, lines 35-47). Fosdick teaches measuring the traffic level of the network and generating data related to the measured traffic level for determining whether the number of links used exceeds the number in the first portion (see col. 5, lines 16-18 & 25-48). Fosdick does not specifically teach a telecommunications platform; a license key; and activating an upgrade license key. Lim teaches a telecommunications platform (see col. 1, lines 66-67 and col. 2, lines 1-6). Lim teaches a license key and activating an upgrade license key (see col. 6, lines 51-59, use of system license from application key relates to license key). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device in Fosdick adapt to include a telecommunications platform; a license key; and

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activating an upgrade license key because Fosdick teaches a communication system and the function of the use tokens in Fosdick can be performed by the application key taught in Lim.

Claims 3-6, 10-13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fosdick (5,752,041) in view of Lim et al (US 6,732,181 B2) and Mougi et al. (US 2001/0037403 A1).

Regarding claim 3 Fosdick and Lim teach a device as recited in claim 1 except for a time-limited validity period, and further comprising a license enforcement element for deactivating the plurality of links enabled by the activation of a license key upon the expiry of the validity period. Fosdick does teach a license enforcement element for deactivating the plurality of links enabled by the activation of the usage token (see col. 5, lines 35-37). Mougi teaches wherein a license key has a time-limited validity period (see paragraph [0060]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device adapt to include a time-limited validity period, and further comprising a license enforcement element for deactivating the plurality of links enabled by the activation of a license key upon the expiry of the validity period because Fosdick teaches a communication system and the function of the use tokens in Fosdick can be performed by an application license key.

Regarding claim 4 Fosdick, Lim, and Brandt teach a device as recited in claim 3 except for wherein the license enforcement element is adapted to progressively deactivate the plurality of links over a predefinable time period. Fosdick teaches a license enforcement that progressively deactivates links (see col. 5, lines 32-37). Mougi teaches wherein a license key has a time-limited validity period (see paragraph [0060]). It would have been obvious to one of

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ordinary skill in the art at the time the invention was made to make the device adapt to include wherein the license enforcement element is adapted to progressively deactivate the plurality of links over a predefinable time period because Fosdick teaches a communication system and the function of the use tokens in Fosdick can be performed by an application license key.

Regarding claim 5 Fosdick, Lim, and Brandt teach a device as recited in claim 3 except for wherein the license enforcement element is adapted to deactivate all of the plurality of links immediately upon expiry of a license key. Fosdick teaches a license enforcement that deactivates links (see col. 5, lines 32-37). Mougi teaches wherein a license key has a time-limited validity period (see paragraph [0060]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device adapt to include wherein the license enforcement element is adapted to deactivate all of the plurality of links immediately upon expiry of a license key because Fosdick teaches a communication system and the function of the use tokens in Fosdick can be performed by an application license key.

Regarding claim 6 Fosdick, Lim, and Brandt teach a device as recited in claim 3 except for wherein the license enforcement element is adapted to deactivate use of the traffic-monitoring element upon expiry of the upgrade license key. Fosdick teaches a license enforcement element that is adapted to use a traffic-monitoring element (see col. 5, lines 32-37). Mougi teaches wherein a license key has a time-limited validity period (see paragraph [0060]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device adapt to include a license enforcement element that is adapted to deactivate use of the traffic monitoring element upon expiry of the upgrade license key because this would

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because Fosdick teaches a communication system and the function of the use tokens in Fosdick can be performed by an application license key.

Regarding claim 10 Fosdick, Lim, and Brandt teach a device as recited in claim 3 and is rejected given the same reasoning as above.

Regarding claim 11 Fosdick, Lim, and Brandt teach a device as recited in claim 4 and is rejected given the same reasoning as above.

Regarding claim 12 Fosdick, Lim, and Brandt teach a device as recited in claim 5 and is rejected given the same reasoning as above.

Regarding claim 13 Fosdick, Lim, and Brandt teach a device as recited in claim 6 and is rejected given the same reasoning as above.

Regarding claim 18 Fosdick and Lim teach a device as recited in claim 1 except for wherein the upgrade license key has a time-limited validity period, and wherein the traffic monitoring element is configured to be enabled, in response to activation of the upgrade license key, for the duration of the validity period. Fosdick teaches wherein the traffic monitoring element is configured to be enabled in response to activation of the usage token (see col. 5, lines 32-37). Mougi teaches wherein license key that has a time-limited validity period (see paragraph [0060]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device adapt to include wherein the upgrade license key has a time-limited validity period, and wherein the traffic monitoring element is configured to be enabled, in response to activation of the upgrade license key, for the duration of the validity period because this would because Fosdick teaches a communication system and the function of the use tokens in Fosdick can be performed by an application license key.

10. Response to Arguments

Claims 1-2, 7-9, and 14-17 are unpatentable under 35 U.S.C. 103(a) as being obvious over Fosdick (5,752,041) in view of Lim et al (US 6,732,181 B2).

Regarding claims 1, 8, 15, 16, and 17 appellant alleges that Fosdick and Lim fail to teach or suggest a licensing framework for *activating an upgrade license key to enable additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity*. The examiner disagrees with this allegation. The combination of Fosdick and Lim clearly reads on enabling additional links to a communications network to increase the total amount of traffic capacity as claimed.

Appellant argues that Fosdick does not teach activating an upgrade license key to enable additional communication links to increase the total amount of traffic capacity because *first*, Fosdick does not disclose that the borrowing of tokens between systems within its distributed system enables additional communication links to increase the total amount of traffic capacity to its ...system; *second*, even if the traffic to a system in Fosdick increases when that system borrows a token to increase the number of users that may use a licensed program, that is not the same as enabling additional communication links to increase the total amount of traffic capacity to that system; and *third*, Lim does not disclose activating an upgrade license key to enable additional ones the plurality of links to the communications network to increase the total amount of traffic capacity.

In response to appellant's *first* argument Fosdick does disclose that the borrowing of tokens between systems within its distributed system enables additional communication links to increase the total amount of traffic capacity to its system. Fosdick teaches a use token which

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allows use or access of a licensed program within a system (see col. 4, lines 5-7). Fosdick teaches a local count which represents the number of allowed uses of the licensed program within the system (see col. 5, lines 38-41). Fosdick teaches transferring a use token from system A to system B (see col. 7, lines 39-42 and Figs. 5G and 5H). The result of this transfer, according to col. 7, lines 39-42 and Figs. 5G and 5H, is that system B is now able to allow use of the licensed program to one more user than it could have before the transfer took place (see Figs. 5G and 5H, wherein the local count representing allowed uses of system B in Fig. 5G is 3 and wherein the local count representing allowed uses of system B in Fig 5H after the transfer is 4). This clearly shows that the transfer of a use token from system A to system B does enable an additional communication link because it allows an additional user access to the licensed program within the system B. This also clearly shows that the transfer of the use token increases the total amount of traffic capacity to the system because the number of uses allowed in system B increases from 3 to 4 as a result of the transfer (the number of uses allowed within system B (3) before transfer is being interpreted by the examiner to read on traffic capacity because the number of allowed uses (3) represents the total number of users that the system can accept at that time).

Therefore, the combination of Fosdick and Lim teach a device as claimed in claims 1-2, 7-9, and 14-17.

In response to appellant's *second* argument transfer of a use token from system A to system B that results in the increase of allowed uses in system B from 3 to 4 is analogous to enabling additional communication links to increase the total amount of traffic capacity to that system because it allows an additional user access to the licensed program within the system B

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and the number of uses allowed in system B increases from 3 to 4 as a result of the transfer (the number of uses allowed within system B (3) before transfer is being interpreted by the examiner to read on traffic capacity because the number of allowed uses (3) represents the total number of users that the system can handle at that time).

Therefore, the combination of Fosdick and Lim teach a device as claimed in claims 1-2, 7-9, and 14-17.

In response to appellant's *third* argument appellant has improperly attacked the references individually. Fosdick teaches transferring a use token to enable additional links to a communications system to increase the total amount of traffic capacity to the system (see col. 7, lines 39-42 and Figs. 5G and 5H). This reads on the claimed enabling additional communication links to the communications network to increase the total amount of traffic capacity as shown above. Lim is being combined with Fosdick only because Fosdick does not specifically use the phrase activating an upgrade license key. Fosdick does teach the transferring of a use token (see col. 7, lines 39-42 and Figs. 5G and 5H). The transferring of a use token is analogous to activating an upgrade license key as claimed because both the use token and the claimed license key allows or enables access to licensed programs or products. This is further illustrated in the background section of Fosdick, which uses the terms license token and key interchangeably (see col. 1, lines 49-50).

Therefore, the combination of Fosdick and Lim teach a device as claimed in claims 1-2, 7-9, and 14-17.

Appellant has offered no arguments regarding the patentability of dependent claims 2, 7, 9 and 14 other than that they depend on allegedly patentable independent claims 1 and 8.

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However, dependent claims 2, 7, 9 and 14 are unpatentable because they depend on unpatentable independent claims 1 and 8, which have been shown to be unpatentable above.

Therefore, the combination of Fosdick and Lim teach a device as claimed in claims 1-2, 7-9, and 14-17.

Claims 3-6, 10-13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fosdick (5,752,041) in view of Lim et al (US 6,732,181 B2) and Mougi et al. (US 2001/0037403 A1).

Regarding claims 3-6, 10-13, and 18 appellant has offered no arguments regarding the patentability of dependent claims 3-6, 10-13, and 18 other than that they depend on allegedly patentable independent claims 1 and 8. However, dependent claims 3-6, 10-13, and 18 are unpatentable because they depend on unpatentable independent claims 1 and 8, which have been shown to be unpatentable above.

Therefore, the combination of Fosdick, Lim, and Mougi teach a device as claimed in claims 3-6, 10-13, and 18.

11. *Evidence Appendix*

An evidence appendix is not included in the brief.

12. *Related Proceedings Appendix*

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the reasons above, it is believed that the rejections pertaining to all of the appealed claims should be sustained.

Respectfully submitted,

/Brandon J Miller/

Examiner, Art Unit 2617

Conferees:

/George Eng/

Supervisory Patent Examiner, Art Unit 2617

/NICK CORSARO/

Supervisory Patent Examiner, Art Unit 2617